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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,691	06/03/2002	Stephen Gill	PA-9947	3741

36335 7590 06/29/2007  
GE HEALTHCARE, INC.  
IP DEPARTMENT  
101 CARNEGIE CENTER  
PRINCETON, NJ 08540-6231

EXAMINER
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JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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06/29/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/069,691	<b>Applicant(s)</b> GILL ET AL.	
	<b>Examiner</b> D. L. Jones	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/27/07</u> .   | 6) <input type="checkbox"/> Other: _____                          |

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## **ACKNOWLEDGMENTS**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/27/07 has been entered.

**Note:** Claims 1-14 are pending.

## **RESPONSE TO APPLICANT'S ARGUMENTS**

2. The Applicant's arguments and/or amendment filed 3/27/07 to the rejection of the claims made by the Examiner under 35 USC 103 have been fully considered and deemed non-persuasive for reasons of record in the office action mailed 12/29/06 and those set forth below.

### **103 Rejection**

The rejection of claims 1-14 under 35 USC 103(a) as being unpatentable over Crane (US Patent No. 5,951,952) in view of Yamaguchi et al (JP 11-99192) in further view of Schott Glaswerke (DE 29609958) or Walther (US Patent No. 6,200,658) is MAINTAINED.

In summary, Applicant summarizes each reference and asserts that JP '192 has been mischaracterized; the Schott Glaswerke document provides no further description of a contained material such as a radiopharmaceutical metal complex; and Walther

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contains no references to radiopharmaceutical metal complex. In addition, applicant asserts that it would not be obvious to modify Crane to use vials having a silica coating inner surface when there are several other various vial coatings that provide 'various advantages' for various pharmaceuticals as well. Additional assertions include that the Examiner has failed to justify the motivation to (1) select a feature to improve (the vial); (2) there is no motivation to expect the change to a coated vial to bring useful improvements; and (3) there is no motivation to select one particular coating, silica, over the wide range of such coatings taught to have useful properties in the prior art. Furthermore, it is asserted that the Examiner has applied hindsight reasoning in arriving at Applicant's invention.

It is once again noted that Applicant is making the same arguments again that the Examiner has already repeatedly responded to. Specifically, Applicant's arguments are not persuasive for reasons already of record in the office actions mailed 11/29/05, 5/18/06, and 12/29/06. Also, Applicant is reminded that for a Jepson claim, the preamble acknowledges the prior art teachings. Thus, what is disclosed in Applicant's preamble is taught in Yamaguchi et al (JP 11-99192). Specifically, Yamaguchi et al disclose a container for radiopharmaceuticals characterized in that the interior surface of a glass container is coated with silica (see page 2, claim 1). The words 'the improvement comprising' between the preamble and the body of the claim, discloses what is believed to be unique (the novelty of the invention). Thus, Applicant is claiming that the addition of a metal to a radiopharmaceutical is novel. Well, it is well known in the art to have a radiopharmaceutical comprising a metal (see Crane et al, US Patent

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No. 5,961,952). Furthermore, the teachings of Walther et al and Schott Glaswerke (DE 29,609,958) disclose coating the interior of a glass with SiO<sub>2</sub>. Thus, if it is known to have a radiopharmaceutical in a silica coated vessel (Yamaguchi et al, JP 11-99192) and it is also known to have a radiopharmaceutical comprising a metal, then the invention would be obvious. Therefore, in response to Applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As a result, based on the teachings of the cited prior art the rejection is deemed proper.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.


For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



D. L. Jones  
Primary Examiner  
Art Unit 1618

June 23, 2007